

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File No. EB-08-SE-112
)	NAL/Acct. No. 200832100049
Farmers Cellular Telephone, Inc.)	FRN # 0001753771
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: June 2, 2008

Released: June 4, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Farmers Cellular Telephone, Inc. (“Farmers Cellular”), a Global System for Mobile Communications (“GSM”) carrier serving rural Alabama, apparently willfully and repeatedly violated Section 20.19(d)(2)¹ of the Commission’s Rules (“Rules”) by failing to include in its digital wireless handset offerings at least two models that meet the inductive coupling standards for hearing aid compatibility by September 18, 2006. For Farmers Cellular’s apparent violations, and for the reasons discussed below, we propose a forfeiture in the amount of thirty thousand dollars (\$30,000).

II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of individuals with hearing disabilities to access digital wireless telecommunications.² The Commission established technical standards that digital wireless handsets must meet to be considered compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.³ Specifically, the Commission adopted a standard for radio frequency interference (the

¹ 47 C.F.R. § 20.19(d)(2).

² See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Report and Order, 18 FCC Rcd 16753 (2003); *Erratum*, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); *Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 11221 (2005) (“*Hearing Aid Compatibility Reconsideration Order*”). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

³ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777; 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive (telecoil) coupling modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into electrical signals. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often

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“U3” or “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “U3T” or “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.⁴ The Commission further established, for each standard, deadlines by which manufacturers and service providers were required to offer specified numbers or percentages of digital wireless handsets per air interface⁵ that are compliant with the relevant standard if they did not come under the *de minimis* exception.⁶

3. The Commission required that manufacturers and service providers begin making commercially available at least two handset models per air interface that meet the U3 or M3 rating for radio frequency interference by September 16, 2005.⁷ The Commission also required that manufacturers and service providers make commercially available at least two handset models per air interface that meet the U3T or T3 rating for inductive coupling by September 18, 2006.⁸ In connection with the offer of

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results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

Id. at 16763.

⁴ Section 20.19(b)(1) provides that a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at minimum, it receives a U3 rating as set forth in “American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids, ANSI C63.19-2001.” 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it receives a U3T rating as set forth in ANSI C63.19-2001. 47 C.F.R. § 20.19(b)(2). On April 25, 2005, the Commission’s Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2005. *See OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature*, Public Notice, 20 FCC Rcd 8188 (OET 2005). On June 6, 2006, the Commission’s Wireless Telecommunications Bureau and Office of Engineering and Technology announced that the Commission would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.19-2006. Thus, during the time period relevant here, applicants for certification could rely on either the 2001 version, the 2005 version, or the 2006 version of the ANSI C63.19 standard. *See Wireless Telecommunications Bureau and Office of Engineering and Technology Clarify Use of Revised Wireless Phone Hearing Aid Compatibility Standard*, Public Notice, 21 FCC Rcd 6384 (WTB/OET 2006). In addition, since the 2005 version, the ANSI C63.19 technical standard has used an “M” nomenclature for the radio frequency interference rating rather than a “U,” and a “T” nomenclature for the handset’s inductive coupling rating, rather than a “UT.” The Commission has approved the use of the “M” and “T” nomenclature and considers the M/T and U/UT nomenclatures as synonymous. *See Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11238.

⁵ The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN), Time Division Multiple Access (TDMA), and Wideband Code Division Multiple Access (WCDMA) a/k/a Universal Mobile Telecommunications System (UMTS).

⁶ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; 47 C.F.R. §§ 20.19(c), (d). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e).

⁷ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; *see also* 47 C.F.R. § 20.19(c).

⁸ *See Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780; *see also* 47 C.F.R. § 20.19(d). In addition, on February 28, 2008, the Commission released an order that, as modified on reconsideration, among other things, (a) modifies the requirement that manufacturers and service providers ensure that 50 percent of their digital wireless handset models per air interface meet the U3/M3 (radio frequency) standard and stays enforcement of that requirement until the new rules become effective, (b) increases the obligation on manufacturers and service providers to offer handset models that meet the U3T/T3 (inductive coupling) standard, (c) allows service providers (continued ...)

hearing aid-compatible handset models, the Commission further required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.⁹ In order to monitor the availability of these handsets, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.¹⁰

4. In its September 18, 2006 Report, Farmers Cellular noted that as of the September 18, 2006 deadline, it had been unable to obtain U3T/T3 (inductive coupling) compliant phones from its handset distributors (Motorola, Nokia, and Samsung) and requested a waiver of this requirement.¹¹ In its June 12, 2007 Report, Farmers Cellular stated that on May 31, 2007, it learned that two Sony Ericsson models, compliant with the U3T/T3 rating, the Sony Ericsson W712a (FCC ID # PY7AF042011) and Sony Ericsson Z712a (FCC ID # PY7AF042012), had been made available to small carriers. Farmers Cellular stated that it immediately placed orders for these handsets, and as of June 6, 2007, it began offering the Sony Ericsson W712a and Z712a handset models.¹²

5. On February 27, 2008, the Commission released the *February 2008 Inductive Coupling Compatibility Waiver Order*,¹³ addressing individually each of 46 waiver petitions filed on behalf of a total of 90 Tier III carriers, including Farmers Cellular, five Tier II carriers, one Mobile Virtual Network Operator, and one handset manufacturer for relief from the hearing aid compatibility requirements for digital wireless telephones. In its waiver request, Farmers Cellular sought an open-ended waiver until inductive coupling-compliant handsets became available, citing its inability, as a Tier III carrier, to obtain compliant handsets from its distributors.¹⁴ Farmers Cellular stated that it checked with its distributors on at least a monthly basis and ordered the Sony Ericsson W712a and Sony Ericsson Z712a handsets as soon

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other than Tier I carriers an additional three months to meet the new handset deployment benchmarks, (d) adopts a technology "refresh" requirement for manufacturers, (e) requires service providers to offer hearing aid-compatible handsets with different levels of functionality, (f) adopts an updated version of the technical standard for measuring hearing aid compatibility, and (g) requires manufacturers and service providers to submit annual reports on an open ended basis, beginning January 15, 2009. See *Amendment of the Commission's Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3408-3411, 3418 (2008) ("*Hearing Aid Compatibility First Report and Order*"), Order on Reconsideration and Erratum, FCC 08-117 (rel. April 17, 2008). The effective date of the new rules is June 6, 2008. See 73 Fed. Reg. 25566 (2008).

⁹ See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785; see also 47 C.F.R. § 20.19(f).

¹⁰ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004). The Commission will now require service providers to submit annual status reports beginning January 15, 2009. See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3410. Manufacturers will report on January 15, 2009, and then annually beginning July 15, 2009. *Id.* at 3410-11, 3446.

¹¹ Farmers Cellular September 18, 2006 Report at 2-3.

¹² Farmers Cellular June 12, 2007 Report at 1-2. Farmers Cellular also reiterated its September 18, 2006 request for a waiver of the Section 20.19(d)(2) requirement. *Id.* at n. 2.

¹³ *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, Petitions for Waiver of Section 20.19 of the Commission's Rules*, Memorandum Opinion and Order, 23 FCC Rcd 3352 (2008) ("*February 2008 Inductive Coupling Compatibility Waiver Order*").

¹⁴ *Id.* at 3363-64. See also Farmers Cellular September 18, 2006 Report at 3.

as it learned of their availability in 2007.¹⁵ Further, Farmers Cellular noted that it had not received any requests for hearing aid-compatible handsets as of March 27, 2007.¹⁶

6. The Commission found that Farmers Cellular did not meet the requirements to justify a waiver under the rules.¹⁷ Specifically, the Commission stated that Farmers Cellular failed to provide evidence that it exercised sufficient diligence in seeking inductive coupling-compliant handsets not only before, but within a reasonable period of time after the September 18, 2006 compliance deadline.¹⁸ Further, the Commission stated that Farmers Cellular did not present any unique facts or circumstances that clearly distinguished it from other Tier III carriers that were able to comply by January 1, 2007, or before.¹⁹ The Commission also noted that 13 inductive coupling-compliant handsets for use on GSM-based systems had been certified as of the September 18, 2006 deadline.²⁰ Given that the great majority of Tier III carriers were able to achieve compliance within a few months of the deadline, the Commission did not consider it sufficient for Farmers Cellular, after January 1, 2007, to simply contact its existing vendors on a monthly basis.²¹ The Commission further found it immaterial whether a carrier has actually received requests for hearing aid-compatible handsets, since the purpose of the hearing aid compatibility rules is to ensure that such handsets will be available in a timely manner when a customer needs them.²² Accordingly, the Commission denied the waiver petition of Farmers Cellular and referred its apparent violation to the Enforcement Bureau.²³

III. DISCUSSION

A. Failure to Offer For Sale Two Hearing Aid-Compatible Handsets

7. Section 20.19(d)(2) of the Rules requires digital wireless service providers to begin offering for sale at least two handset models for each air interface that meet at least a T3 rating for inductive coupling by September 18, 2006. Farmers Cellular admits that it did not offer for sale the required two models of inductive coupling-compliant handsets until June 6, 2007.²⁴ Accordingly, we

¹⁵ See Farmers Cellular June 12, 2007 Report at 2, 5.

¹⁶ See Farmers Cellular March 27, 2007 Report at 1.

¹⁷ *February 2008 Inductive Coupling Compatibility Waiver Order*, 23 FCC Rcd at 3364. See also 47 C.F.R. § 1.925(b)(3).

¹⁸ *February 2008 Inductive Coupling Compatibility Waiver Order*, 23 FCC Rcd at 3365.

¹⁹ *Id.*

²⁰ *Id.* at 3357.

²¹ *Id.* at 3365.

²² *Id.*, citing 47 U.S.C. § 610(a) (directing Commission to “ensure reasonable access to telephone service by persons with impaired hearing”).

²³ On March 27, 2008, Farmers Cellular filed a petition for reconsideration of the *February 2008 Inductive Coupling Compatibility Waiver Order*. On May 7, 2008, the Wireless Telecommunications Bureau placed Farmers Cellular’s petition, along with six other petitions for reconsideration, on public notice and established a pleading cycle for comments and reply comments. See *Wireless Telecommunications Bureau Seeks Comment on Petitions for Reconsideration Filed in Hearing Aid Compatibility Docket*, Public Notice, DA 08-1087, (rel. May 7, 2008).

²⁴ Farmers Cellular June 12, 2007 Report at 1-2.

conclude that Farmers Cellular apparently willfully²⁵ and repeatedly²⁶ failed to comply with Section 20.19(d)(2) of the Rules.

B. Proposed Forfeiture

8. Under Section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.²⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.²⁹ We conclude under this standard that Farmers Cellular is apparently liable for forfeiture for its apparent willful and repeated violation of Sections 20.19(d)(2) of the Rules.

9. Under Section 503(b)(2)(B) of the Act,³⁰ we may assess a common carrier a forfeiture of up to \$130,000 for each violation, or for each day of a continuing violation up to a maximum of \$1,325,000 for a single act or failure to act. In exercising such authority, we are required to take into account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”³¹

²⁵ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²⁶ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362 (2001); *Southern California*, 6 FCC Rcd at 4388.

²⁷ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

²⁹ *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

³⁰ 47 U.S.C. § 503(b)(2)(B). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$100,000/\$1,000,000 to \$120,000/\$1,200,000); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$120,000/\$1,200,000 to \$130,000/\$1,325,000); *see also* 47 C.F.R. § 1.80(c).

³¹ 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

10. The Commission's *Forfeiture Policy Statement*³² and Section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in Section 20.19 of the Rules. The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "... any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.³³ The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in Section 503 of the Act.³⁴

11. In determining the appropriate forfeiture amount for violation of the hearing aid compatibility handset requirements, we take into account that these requirements serve to ensure that individuals with hearing disabilities have access to digital wireless telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing impairments should not be denied the public safety and convenience benefits of digital wireless telephony.³⁵ Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the growing reliance on wireless technology and with the increasing median age of our population.³⁶

12. We note that in a previous decision, a base forfeiture amount of \$15,000 per handset was established for violations of the hearing aid compatibility handset requirements.³⁷ This base forfeiture amount was based on a determination that a significantly higher base forfeiture amount is warranted for violations of the hearing aid compatibility handset requirements than for violations of the labeling requirements for wireless hearing aid-compatible handsets.³⁸ In reaching this determination, we found that a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually deprives hearing aid users from accessing digital wireless communications.³⁹ Further, because providers were required to offer at least two handset models that meet at least a T3 rating for inductive coupling, we determined that a proposed forfeiture for violation of

³² See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

³³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

³⁴ See *id.*

³⁵ *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755.

³⁶ *Id.* at 16756 (noting that approximately one in ten Americans, 28 million, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). See also *Report on the Status of Implementation of the Commission's Hearing Aid Compatibility Requirements*, Report, 22 FCC Rcd 17709, 17719 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was "at an all time high of 31 million – with that number expected to reach approximately 40 million at the end of this decade").

³⁷ See *South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24-25 (Enf. Bur., Spectrum Enf. Div. 2008) ("*South Canaan*").

³⁸ The Enforcement Bureau has established a base forfeiture amount of \$8,000 for violation of the labeling requirements for wireless hearing aid-compatible handsets. See e.g., *South Central Utah Telephone Association, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19251 ¶ 10 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*; *IT&E Overseas, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7660, 7665 (Enf. Bur., Spectrum Enf. Div. 2007), *response pending*.

³⁹ *South Canaan*, 23 FCC Rcd at 24.

these requirements should be applied on a per handset basis. Accordingly, we impose a base forfeiture amount of \$15,000 per handset for violation of the hearing aid compatibility handset requirements.

13. Farmers Cellular did not offer any handsets that met the T3 rating for inductive coupling by September 18, 2006. Farmers Cellular did not come into compliance with the inductive coupling compatibility requirements until June 6, 2007, when it began offering two compliant handsets. Further, while Farmers Cellular sought a waiver of the September 18, 2006 deadline,⁴⁰ it did not make a showing of good faith, diligent efforts to come into compliance even by January 1, 2007, as other Tier III carriers did, and the Commission, therefore, denied the waiver request.⁴¹ Although Farmers Cellular's failure to offer two handsets that meet the FCC's inductive coupling compatibility requirements is a continuing violation for purposes of determining an appropriate forfeiture, we exercise our prosecutorial discretion and decline to assess a forfeiture on a continuing violation basis in this case.⁴² We also note that Farmers Cellular is a Tier III carrier, *i.e.*, a wireless radio service provider with 500,000 or fewer subscribers.⁴³ Accordingly, Farmers Cellular is apparently liable for a \$30,000 forfeiture for failing to comply with the inductive coupling compatibility requirements in willful and repeated violation of Section 20.19(d)(2).⁴⁴

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section 1.80 of the Rules, Farmers Cellular Telephone, Inc. **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty thousand dollars (\$30,000) for willful and repeated violation of Section 20.19(d)(2) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Farmers Cellular Telephone, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

⁴⁰ Farmers Cellular September 18, 2006 Report at 2, 3.

⁴¹ *February 2008 Inductive Coupling Compatibility Waiver Order*, 22 FCC Rcd at 3365.

⁴² We caution Farmers Cellular and other carriers that future enforcement actions may consider all failures to comply with our hearing aid compatibility rules, including the inductive coupling requirements, as continuing violations for purposes of calculating appropriate forfeiture amounts.

⁴³ *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14847 (2002).

⁴⁴ Under Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), we are prohibited from assessing a forfeiture for a violation that occurred more than a year before the issuance of a notice of apparent liability for forfeiture. Section 503(b)(6) does not, however, bar us from considering Farmers Cellular's prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. *See Behringer USA, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 1820, 1827 (2006), *forfeiture ordered*, 22 FCC Rcd 10451 (2007) (forfeiture paid); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37, 37-38 (1967) *recon. denied*, 11 FCC 2d 193, 195 (1967). Accordingly, while we take into account the continuous nature of the violations in determining the appropriate forfeiture amount, our proposed forfeiture relates only to Farmers Cellular's apparent violations that have occurred within the past year.

16. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Farmers Cellular will also send electronic notification on the date said payment is made to Peter.Waltonen@fcc.gov and JoAnn.Lucanik@fcc.gov.

17. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

18. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

19. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Timothy E. Welch, Esq., counsel for Farmers Cellular Telephone, Inc., Hill & Welch, 1330 New Hampshire Ave., N.W. #113, Washington, D.C. 20036 and Chris Townson, Farmers Cellular Telephone, Inc., P.O. Box 217, 144 McCurdy Avenue North, Rainsville, AL 35986.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau